

HOUSE No. 1549

By Mr. Mariano of Quincy, petition of Ronald Mariano relative to motor vehicle insurance rates. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT ESTABLISHING A NEW EFFECTIVE DATE FOR THE FIXING AND ESTABLISHING OF PRIVATE PASSENGER AUTO INSURANCE RATES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 175 of the General Laws is hereby amended by striking
2 out section 113B and inserting in place thereof the following
3 section:—

4 Section 113B. The commissioner shall, annually on or before
5 December fifteenth, after due hearing and investigation, fix and
6 establish fair and reasonable classifications of risks, including
7 classifications of risks based on accident involvement and ade-
8 quate, just, reasonable and nondiscriminatory premium charges
9 including commission allowance to be used and charged by com-
10 panies in connection with the issue or execution of motor vehicle
11 liability policies or bonds, both as defined in section thirty-four A
12 of chapter ninety, to become effective on April first of the ensuing
13 year or any part thereof. The commissioner upon the basis of
14 information which shall be filed by the Massachusetts Automobile
15 Rating and Accident Prevention Bureau or any successor organi-
16 zation thereto, shall determine whether insurance companies uti-
17 lize adequate programs to control costs and expenses, in
18 accordance with standards determined or approved by the com-
19 missioner. At a minimum, such programs shall be designed to
20 have a material impact on premium charges by reducing costs and
21 expenses incurred by insurance companies. In the event the
22 Massachusetts Automobile Rating and Accident Prevention
23 Bureau fails to make such filing, or if the commissioner deter-
24 mines that the filing is deficient or that the programs are inade-

25 quate, the commissioner shall limit in any manner he determines
26 to be appropriate the amount of any adjustment in premium
27 charges based upon changes in costs and expenses. The commis-
28 sioner shall direct the plan created under section one hundred and
29 thirteen H to establish procedures for the implementation, moni-
30 toring and enforcement of programs to control costs and expenses
31 identified by the commissioner in accordance with this paragraph,
32 and shall report to the commissioner annually on the effectiveness
33 of and the implementation by the various companies of the pro-
34 grams to control costs and expenses identified by the commis-
35 sioner. In fixing and establishing premium charges in accordance
36 with the provisions of this section, if an insured having paid the
37 premium on the insurance policy to the company or its agent, can-
38 cels his insurance policy within thirty days of the effective date or
39 within thirty days of receipt of his insurance policy, whichever is
40 later, the commissioner shall authorize that the insured receive a
41 return premium prorated based on the actual calendar days of cov-
42 erage; but if the insured cancels his insurance policy later than
43 thirty days from its effective date or later than thirty days from
44 receipt of the policy, whichever is later, the insured shall be enti-
45 tled to a return premium after the monthly short rates, as deter-
46 mined by the commissioner, have been deducted from the time the
47 policy shall have been in force. In fixing and establishing pre-
48 mium charges in accordance with the provisions of this section,
49 the deficit of the plan, established under section one hundred and
50 thirteen H, shall not be distributed to risks based on classification
51 or territory. The effective dates of procurement or cancellation of
52 insurance from insurance companies shall determine the cost to
53 the insured for such coverage on an equal per diem basis estab-
54 lished for the yearly cost of insurance policies. He shall, on or
55 before said date, sign memoranda of the classifications and pre-
56 mium charges fixed and established by him in such form as he
57 may prescribe and file the same in his office and cause a duly cer-
58 tified copy of such classifications and schedule of premium
59 charges forthwith to be transmitted to each company authorized to
60 issue such policies or to execute such bonds. During said year, the
61 classifications and premium charges fixed and established by the
62 commissioner for such policies shall be used by all companies
63 issuing such policies, and the classifications and premium charges

64 for such bonds shall be used by all companies acting as surety on
65 such bonds, except that any such company may make written
66 application to the commissioner for permission to use, in place of
67 the premium charges fixed and established by him as aforesaid, a
68 percentage decrease from said premium charges which shall be
69 uniform for all such classifications throughout the commonwealth.
70 Such deviations shall be allowed only if the commissioner finds
71 that the premium charges the applicant desires to use are adequate,
72 just, reasonable and nondiscriminatory and will not be used by the
73 applicant as a means of attracting only such risks as are regarded
74 as presenting less hazard of loss than other risks in the same clas-
75 sification. Every application for permission to so deviate shall be
76 filed with the commissioner subsequent to and within thirty days
77 of his having filed in his office the memoranda aforesaid and shall
78 specify the basis therefor and shall be accompanied by the data
79 upon which the applicant relies. A copy of the application and
80 data shall be sent by such company simultaneously to the Massa-
81 chusetts Automobile Rating and Accident Prevention Bureau or
82 any successor organization thereto. The commissioner shall then
83 set the time and the place for a hearing on such application at
84 which the applicant and said Bureau or any member thereof may
85 be heard and shall give the applicant and said Bureau not less than
86 ten days written notice thereof. The time so established for the
87 hearing shall not be later than thirty days after receipt by the com-
88 missioner of the application. If the commissioner finds that the
89 deviation is justified and the resulting premium charges satisfy the
90 requirements of this section, he shall issue an order permitting the
91 deviation to be used by the applicant for the ensuing year begin-
92 ning April first.

93 In setting the claims frequency and cost trend and projection
94 factors used to fix and establish classifications of risks and pre-
95 mium charges, the commissioner shall explicitly consider recent
96 actual Massachusetts claims frequency, cost trend and loss data,
97 and shall make express findings as to the claims frequency and
98 cost trend and projection factors which such data would indicate
99 for the respective coverages. He shall also consider such other
100 evidence, argument and considerations as he finds credible and
101 relevant. He shall justify the claims frequency and cost trend and
102 projection factors which he uses with specific findings of fact and

103 conclusions of law regarding all disputed material issues, and if
104 the claims frequency, cost trend and projection factors which he
105 uses materially deviate from the claims frequency, cost trend and
106 projection factors derived from such recent Massachusetts data, he
107 shall explicitly set forth the reasons therefor by making specific
108 findings of fact and rulings, which shall justify such deviation and
109 which shall be based on substantial evidence. For the purpose of
110 evaluating any methodology proposed by a party to the rate
111 hearing to be used for trending or projecting claims frequency or
112 costs in setting the premium charges for the rate year in issue, if
113 the commissioner makes specific findings that the same method-
114 ology was used in fixing and establishing premium charges in
115 prior years in Massachusetts, a party may introduce into evidence
116 the actual results caused by the use of that methodology in prior
117 years.

118 In fixing and establishing classifications of risks, the commis-
119 sioner shall establish rates for insureds age sixty-five or older,
120 who otherwise qualify for the lowest rate classification applicable
121 to drivers generally, which shall be twenty-five percent less than
122 the applicable rate for such classification.

123 In fixing and establishing classifications of risks, the commis-
124 sioner shall establish rates for graduates of motorcycle rider
125 training programs administered pursuant to the provisions of
126 section 35G of chapter 10 which shall be ten percent less than the
127 applicable rate for such classification.

128 In fixing and establishing classifications of risks, the commis-
129 sioner shall not group risks by sex or marital status, and shall not
130 group risks by age except to provide the reduction in rates for
131 insureds age sixty-five years or older required by this section.

132 All persons sixty-five years of age or older who are entitled to
133 such reduction in rate, shall be notified annually of such reduction
134 in rate. All such persons shall be reimbursed by the insurance car-
135 rier for all reductions in rate applicable to said driver from the
136 time that they were sixty-five years of age which they did not
137 receive. The percentage of the reduction for each coverage for an
138 insured aged sixty-five or older shall be itemized on the motor
139 vehicle liability policy. In the event that an insured reaches the
140 age of sixty-five during the policy year, and is otherwise entitled
141 to said reduction, said insured shall receive a reduction in pre-
142 mium on a pro rata basis for the remainder of the policy year.

143 In fixing and establishing classifications of risks, the commis-
144 sioner may provide for appropriate reductions in the premium
145 charges for the relevant coverages if he finds that vehicles are less
146 damageable due to safety features incorporated into such vehicles
147 or that the occupants of vehicles are less likely to suffer bodily
148 injury due to safety features including, but not limited to, occu-
149 pant crash protection devices, incorporated into such vehicles or
150 that any optional policy provision will result in savings through
151 reduced costs.

152 In fixing and establishing classifications of risks for compre-
153 hensive fire and theft coverage so-called to motor vehicles, the
154 commissioner shall provide for appropriate reductions in the pre-
155 mium charges covering such vehicles if such vehicle is equipped
156 with an anti-theft mechanism or device approved by the commis-
157 sioner; provided that the commissioner shall establish a specific
158 reduction of a minimum of twenty-five percent in said premium
159 charges for vehicles equipped with both an anti-theft mechanism
160 or device and an auto recovery system.

161 In fixing and establishing classifications of risks for personal
162 injury protection, uninsured and underinsured motorist protection,
163 and medical payments coverages so-called, the commissioner
164 shall provide for appropriate reductions in premium charges cov-
165 ering vehicles equipped with one or more air bags or a passive
166 restraint device approved by the commissioner.

167 In so fixing and establishing classifications of risks under this
168 section, the commissioner shall establish a safe driver insurance
169 plan to equitably reflect the driving records of insureds. Such plan
170 shall reflect an adjustment of insurance premium based on at-fault
171 accidents, convictions of moving violations of motor vehicle laws,
172 including payments pursuant to chapter ninety C and assignments
173 to driver alcohol education programs under the provisions of
174 section twenty-four D of chapter ninety, or any combination
175 thereof; and based on four or more comprehensive claims totalling
176 two thousand dollars or more unless fire, theft, comprehensive
177 and collision coverages are not purchased by the insured; as com-
178 piled and recorded by the motor vehicle insurance merit rating
179 board established pursuant to section one hundred and eighty-
180 three of chapter six. In establishing the four or more comprehen-
181 sive claims totalling two thousand dollars or more, claims for

182 damages caused by acts of God shall be excluded. Upon receiving
183 notification from said merit rating board that a person has
184 received seven at-fault accidents or convictions of moving viola-
185 tions of motor vehicle laws, including payments pursuant to
186 chapter ninety C and assignments to driver alcohol education pro-
187 grams under the provisions of section twenty-four D of chapter
188 ninety during any three year period, the registrar shall, after a
189 hearing based solely on the accuracy of said merit rating board's
190 records, suspend the license or right to operate a motor vehicle for
191 sixty days. The cost of any hearings required by the provisions of
192 this section shall be assumed by the merit rating board. Such plan
193 shall reflect an adjustment of insurance premium based on at-fault
194 accidents, convictions of moving violations of motor vehicle laws,
195 including payments pursuant to chapter ninety C, assignment to a
196 driver alcohol education program, or any combination thereof, and
197 based on four or more comprehensive claims totalling two thou-
198 sand dollars or more unless fire theft, comprehensive and collision
199 coverages are not purchased by the insured, as compiled and
200 recorded by the motor vehicle insurance merit rating board estab-
201 lished pursuant to section one hundred and eighty-three of chapter
202 six. Said plan shall also reflect an adjustment for insurance pre-
203 mium based upon any motor vehicle violation reported to the reg-
204 istrar pursuant to the first paragraph of paragraph (c) of section
205 twenty-two.

206 Said plan shall also take into consideration convictions reported
207 to the registry of motor vehicles as the result of any compact
208 entered into by the secretary of public safety for the exchange of
209 information between states.

210 The safe driver insurance plan shall provide for a series of
211 driver classifications based upon driving record which shall
212 reflect individual driving experience. The plan shall provide for
213 upward premium adjustments for drivers who in the preceding
214 five year period have accumulated three or more unsafe driver
215 points based on one or more of the following surchargeable inci-
216 dents: at-fault accidents, convictions of moving violations of
217 motor vehicle laws, including payments pursuant to chapter ninety
218 C and assignments to driver alcohol education programs under the
219 provisions of section twenty-four D of chapter ninety, or any com-
220 bination thereof, or four or more comprehensive claims totalling

221 two thousand dollars or more unless fire, theft, comprehensive
222 and collision coverages are not purchased by the insured. For the
223 purposes of determining upward premium adjustments, the plans
224 made effective on or after January first, nineteen hundred and
225 ninety-one, shall consider only those surchargeable incidents with
226 surcharge dates in the five year period immediately preceding the
227 effective date of the policy. Notwithstanding the foregoing, with
228 respect to the plan made effective on January first, nineteen hun-
229 dred and ninety-one, the premium adjustment for any class of
230 driver, some or all members of which received a surcharge in
231 nineteen hundred and ninety attributable in whole or in part to sur-
232 chargeable incidents with surcharge dates prior to January first,
233 nineteen hundred and eighty-five, shall be reduced to reflect the
234 approximate dollar amount of the increase in surcharges paid by
235 that class of driver to the extent that such increase was attributable
236 to surchargeable incidents with surcharge dates prior to January
237 first, nineteen hundred and eighty-five. Pursuant to such plan the
238 commissioner may place drivers who have accumulated fewer
239 than three unsafe driver points, so-called, into classifications for
240 which an upward premium adjustment is provided. The registrar
241 shall develop a system for separately reporting violations for dri-
242 ving a motor vehicle which has an expired registration sticker
243 affixed to the license plate. When the registrar has implemented
244 such a system, driving a motor vehicle which has an expired regis-
245 tration sticker affixed to the license plate shall not be considered a
246 surchargeable incident.

247 There shall be a downward premium adjustment called an
248 excellent driver award. The adjustment shall apply to every driver
249 with no surchargeable incidents within the five years immediately
250 preceding the applicable rate year. There shall also be larger
251 adjustments made for drivers with no surchargeable incidents over
252 such longer period or periods as the commissioner shall deter-
253 mine, and there may be such smaller adjustments for drivers with
254 no surchargeable incidents over such shorter period or periods as
255 the commissioner shall determine. The commissioner shall estab-
256 lish both the number of classifications, the size of the premium
257 adjustments and initial classification assignment; provided, how-
258 ever, that the plan shall be designed so that the decrease in aggre-
259 gate premiums attributable to the downward adjustments within

260 the plan equals the increase in aggregate premiums attributable to
261 the upward adjustments in the plan. Insureds who have accumu-
262 lated three or more unsafe driver points within the five years
263 immediately preceding the applicable rate year shall be placed in
264 classifications for which the upward premium adjustment is actu-
265 arially sound. Nothing in this section shall preclude the commis-
266 sioner from also placing drivers who have accumulated fewer than
267 three unsafe driver points, so-called, into classifications for which
268 the upward premium adjustment is actuarially sound. The com-
269 missioner and the merit rating board shall develop a system for
270 considering the driving experience of drivers previously licensed
271 in states other than Massachusetts in order to provide upward or
272 downward premium adjustments to such drivers.

273 Upon receiving notification from said merit rating board that a
274 driver has had five surchargeable incidents within the past three
275 years, the registrar shall, after a hearing based solely on the accu-
276 racy of said merit rating board's records, require the said driver to
277 participate in and complete a driver education program satisfac-
278 tory to the registrar. If such driver fails to provide to the registrar
279 proof of completion of such driver education program within
280 ninety days after the registrar mails to the driver notice of such
281 requirement, the registrar shall suspend the driver's license or
282 right to operate a motor vehicle until the registrar receives proof
283 of completion of such driver education program.

284 The commissioner shall establish reasonable rules to assure that
285 all insureds are informed of any premium adjustments, and the
286 reasons therefor, made as the result of this safe driver insurance
287 plan.

288 In fixing and establishing classifications of risks, the commis-
289 sioner shall establish a separate rate for coverage provided in
290 paragraph (2) of section one hundred and thirteen L.

291 If the method of operation of any company other than those
292 operating pursuant to the so-called American Agency System
293 results in excessive profits above nine percent return on its earned
294 premiums averaged over three years, the commissioner shall order
295 a refund or dividend to current policyholders in the amount of
296 such profit attributable to the difference between the amount
297 allowed for expenses including acquisition costs in the rates for
298 motor vehicle insurance and the company's actual expenses

299 including acquisition costs incurred over the same three year
300 period, provided such profits have not been previously returned to
301 the holders of policies issued by such company.

302 In so fixing and establishing premium charges to be used and
303 charged in accordance with the provisions of this section, the
304 commissioner shall consider, in establishing said rates, the reduc-
305 tion of fraud achieved through the entity created pursuant to
306 section one hundred and thirteen H.

307 The commissioner shall, annually on or before December fif-
308 teenth, after due hearing and investigation, fix and establish ade-
309 quate, just, reasonable and nondiscriminatory premium charges to
310 be used and charged by companies in connection with the issue or
311 execution of liability policies or bonds, for the ensuing year or
312 any part thereof, which provide indemnity for or protection to the
313 insured or to the obligor and any person responsible for the opera-
314 tion of the motor vehicle of the insured or of the obligor with his
315 express or implied consent against loss by reason of the liability to
316 pay damages to others for bodily injuries, including death at any
317 time resulting therefrom, or for injury to or destruction of property
318 of others, or consequential damages consisting of expenses
319 incurred by a husband, wife, parent or guardian for medical,
320 nursing, hospital or surgical services in connection with or on
321 account of such bodily injuries or death, sustained during the term
322 of such policy or bonds by a guest occupant of such motor
323 vehicle, as defined in section thirty-four A of chapter ninety, and
324 arising out of the ownership, operation, maintenance, control or
325 use upon the ways of the commonwealth of such motor vehicle;
326 provided, that the parties to any such policy or bond may contract
327 for the payment of a higher premium charge than that fixed and
328 established as aforesaid. The provisions of this section applicable
329 to motor vehicle liability policies or bonds, as defined in said
330 section thirty-four A, shall, so far as apt, apply to the premium
331 charges fixed under this paragraph. He shall annually, at the time
332 he fixes and establishes premium charges and classifications of
333 risks, establish rules requiring companies to provide an informa-
334 tion sheet of the provisions of such policies or bonds which out-
335 lines the various choices of coverage available to motorists and an
336 approximation of the differences in cost between the various types
337 of coverages. Every company, agent or broker shall forward this

338 information sheet to every person it seeks to insure or renew at the
339 time such person is provided with an application for such insur-
340 ance. He shall promulgate a standard form of application to be
341 used by companies for issuance and reissuance of such policies or
342 bonds and all other coverages included within such policies or
343 bonds, but any company issuing or reissuing said policies may do
344 so without requiring such application. In fixing and establishing
345 the charges, as provided in this paragraph, the commissioner shall
346 take into account investment income from unearned premium and
347 loss reserves.

348 The commissioner shall cause notice of every such hearing to
349 be given by advertising the date thereof once in at least one news-
350 paper printed in each of the cities of Boston, Worcester, Spring-
351 field, Newburyport, Gloucester, Pittsfield, Fall River, New
352 Bedford, Haverhill, Holyoke, Lawrence, Lowell and Lynn, and in
353 the towns of Athol and Greenfield, at least ten days prior to said
354 date. Such notice shall be in such form as the commissioner may
355 deem expedient.

356 The commissioner may make, and, at any time, alter or amend,
357 reasonable rules and regulations to facilitate the operation of this
358 section and enforce the application of the classifications and pre-
359 mium charges fixed and established by him, and to govern hear-
360 ings and investigations under this section. He may at any time
361 require any company to file with him such data, statistics, sched-
362 ules or information as he may deem proper or necessary to enable
363 him to fix and establish or secure and maintain fair and reasonable
364 classifications of risks and adequate, just, reasonable and non-dis-
365 criminatory premium charges for such policies or bonds. Every
366 company selling automobile insurance coverage in the common-
367 wealth shall file with the commissioner complete financial records
368 showing the amount of profit made on every line of automobile
369 insurance during the previous year, and shall also file records
370 showing profits from investment income, including investment
371 income on net realized capital gains. He may issue such orders as
372 he finds proper, expedient or necessary to enforce and administer
373 the provisions of this section, to secure compliance with any rules
374 or regulations made thereunder, and to enforce adherence to the
375 classifications and premium charges fixed and established by him.
376 The supreme judicial court for the county of Suffolk shall have

377 jurisdiction in equity upon the petition of the commissioner and
378 upon a summary hearing, to enforce all lawful orders of the com-
379 missioner. Memoranda of all actions, orders, findings and deci-
380 sions of the commissioner shall be signed by him and filed in his
381 office as public records open to public inspection.

382 Any person or company aggrieved by any action, order, finding
383 or decision of the commissioner under this section may, within
384 twenty days from the filing of such memorandum thereof in his
385 office, file a petition in the supreme judicial court for the county
386 of Suffolk for a review of such action, order, finding or decision.
387 An order of notice returnable not later than seven days from the
388 filing of such petition shall forthwith issue and be served upon the
389 commissioner. Within ten days after the return of said order of
390 notice, the petition shall be assigned for a speedy and summary
391 hearing on the merits. The action, order, finding or decision of the
392 commissioner shall remain in full force and effect pending the
393 final decision of the court unless the court or a justice thereof after
394 notice to the commissioner shall by a special order otherwise
395 direct. The court shall have jurisdiction in equity to modify,
396 amend, annul, reverse or affirm such action, order, finding or deci-
397 sion, shall review all questions of fact and of law involved therein
398 and may make any appropriate order or decree. The decision of
399 the court shall be final and conclusive on the parties. The court
400 may make such order as to costs as it deems equitable. The court
401 shall make such rules or orders as it deems proper governing pro-
402 ceedings under this section to secure prompt and speedy hearings
403 and to expedite final decisions thereon.

404 If, for any reason, classifications of risks and premium charges
405 fixed and established as aforesaid on or before December fifteenth
406 in any year for the ensuing year are not effective for the said year,
407 the classifications of risks and premium charges in effect for the
408 then year shall remain in full force and effect, and shall be used
409 and charged in connection with the issue or execution of motor
410 vehicle liability policies or bonds for said ensuing year until clas-
411 sifications of risks and premium charges for said ensuing year are
412 finally fixed and established. Classifications of risks and premium
413 charges when finally fixed and established for said ensuing year
414 shall become effective as of April first of said year, and all pre-
415 mium charges affected by any change thereby made which have

416 been paid or incurred prior to the time when such charges are
417 finally fixed and established shall be adjusted in accordance with
418 such change, as of said April first.

419 The commissioner, his deputies or examiners shall at all times
420 have access to the certificates defined in said section thirty-four A
421 filed with the registrar of motor vehicles.

422 Every mutual company issuing or executing motor vehicle lia-
423 bility policies or bonds, both as defined in said section thirty-four
424 A, shall constitute such policies or bonds as a separate class of
425 business for the purpose of paying dividends. Any dividends on
426 such policies or bonds shall be declared on the profits of the com-
427 pany from said class of business.

428 The original invoice rendered by an insurance company, insur-
429 ance agent or broker to an insured for insurance in connection
430 with a motor vehicle shall be so itemized as to separately indicate
431 the premium charged for compulsory motor vehicle liability insur-
432 ance.

433 The provisions of this section shall not apply to classifications
434 of risks and premium charges for policies and bonds issued to
435 become effective January first, nineteen hundred and seventy-
436 seven and thereafter, except under circumstances described in
437 section five of chapter one hundred and seventy-five E.

438 The safe driver insurance plan made effective on January 1,
439 1998, and all later plans shall provide that individuals that have
440 been incarcerated pursuant to a criminal conviction shall not be
441 considered to have experienced any incident-free period of driving
442 during any period of incarceration of one year or more. In addi-
443 tion, said plans shall provide that, except as otherwise determined
444 by the commissioner, any such period of incarceration shall be
445 excluded from the five year period within which surchargeable
446 incidents may be considered. In implementing the provisions of
447 this paragraph, the commissioner, for the purposes of determining
448 upward and downward premium adjustments, may adjust the sur-
449 charge date of any surchargeable incident in any manner deemed
450 appropriate, including adding any period of incarceration of one
451 year or more to such surcharge date, and may consider surcharge-
452 able incidents with surcharge dates prior to the five year period
453 immediately preceding the effective date of the policy. The com-
454 missioner of insurance and the secretary of public safety shall

455 develop a system for providing the merit rating board the neces-
456 sary information to adjust driving records for periods of incarcera-
457 tion in accordance with this paragraph and shall consider periods
458 of incarceration in other jurisdictions to the extent practicable.